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COMMONWEALTH OF VIRGINIA, ex rel.

TERRY L. STROCK, et al.

v.

CASE NO. PUE-2001-00716

B & J ENTERPRISES, L.C.

HEARING EXAMINER'S RULING

June 27, 2002

On June 21, 2002, Joan G. Moore filed a Motion to Rescind and Refund the \$95 Interim Rate ("Motion to Rescind and Refund") charged by B & J Enterprises, L.C. ("B & J" or "Company") in this proceeding. In support of her Motion to Rescind and Refund, Ms. Moore argues that B & J failed to notify its customers of all of its changes to its Rules, Rates and Regulations as required by Section 56-265.13:5 B of the Code of Virginia. In particular, Ms. Moore asserts that B & J failed to notify its customers of the deletion of the availability fee. Ms. Moore requests that the \$95.00 interim rate be rescinded and that B & J be ordered to refund with interest all rates it has collected in excess of \$40.00 per month.

On June 24, 2002, B & J filed a Response in which it requested the Commission to deny the Motion to Rescind and Refund. Counsel argues that the \$95 interim rate was filed with the Commission in a timely and legal manner. Further, counsel for B & J states that the Motion to Rescind and Refund lacks substantive merit and is untimely.

I find that the Motion to Rescind and Refund should be denied. The issue of the interim rate will be a primary issue in the upcoming hearing on July 15, 2002, in Blacksburg, Virginia. The Commission, by Preliminary Order entered December 12, 2001, suspended the Company's proposed rate increase for a period of sixty days. On January 30, 2002, the Commission authorized the Company to implement the \$95.00 interim rate subject to refund with interest, effective February 11, 2002. Section 56-265.13:6 of the Code of Virginia provides:

. . . [T]he Commission shall have the authority to suspend such rates, tolls, and charges for no more than sixty days and to declare them to be interim thereafter and subject to refund with interest until such time as the Commission has made its final determination in the proceeding.

Quite simply, the Commission does not have the authority to grant the relief requested by Ms. Moore prior to a final determination in this matter. Accordingly,

IT IS DIRECTED that the Motion to Rescind and Refund be, and is hereby, denied.

Howard P. Anderson, Jr.
Hearing Examiner